

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RONALD GOODE,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 1:04-0993
	:	
v.	:	(CONNER, D.J.)
	:	(MANNION, M.J.)
JOHN NASH, Warden, CAPTAIN :		
BEBOW, LT. KOVACH and		
LT. CHEMELY,	:	
	:	
Defendants	:	

ORDER

Before the court is a letter from the plaintiff dated April 21, 2005 in which he states "I have come to notice that the defendants as listed thereon are **incorrectly noted** and listed. There appears the names Lt. Breckon and Lt. Henger, and these are NOT the individuals who I first upon the filing of this suit, intended to cite. The PROPER names are: **Lt. Kovach and Lt. Chemely.**" (Doc. No. 16, emphasis in original).

It is noteworthy that this matter was begun by complaint filed May 5, 2004, almost a year ago. Additionally, the plaintiff filed a \$150.00 filing fee on May 21, 2004. (Doc. No. 6). On May 28, 2004, the appropriate summonses were issued to the plaintiff for service. (Doc. No. 7). Because the plaintiff failed to serve the defendants, the court order that he file a status report by March 7, 2005. (Doc. No.10). The plaintiff filed the status report, which resulted in the court re-issuing the summonses to him on March 15, 2005.

(Doc. No. 12).

Since that time, the plaintiff has filed an application to proceed *in forma pauperis*. (Doc. No. 15). This filing occurred on April 22, 2005 and it includes a correspondence from the plaintiff indicating that he has made numerous attempts to serve the defendants, however, they allegedly have refused service. He now requests that the court direct service by the U.S. Marshals pursuant to Fed.R.Civ.P. 4(c)(2).

In light of the foregoing, and the fact that there has been no entry of appearance by the defendants in this action as of this date, the court will construe the plaintiff's letter (Doc. No. 16) as a motion to add parties. That motion is **GRANTED** and the summonses are to issue as to Lt. Kovach and Lt. Chemely. Additionally, based on the same motion filed by the plaintiff, the defendants Breckon and Henger are **DISMISSED** from the action.

Finally, the plaintiff's motion to proceed *in forma pauperis* (Doc. No. 15) is **DENIED** since he has already paid the \$150.00 filing fee. However, in light of the fact that he has indicated that repeated attempts to serve the defendants have been met with resistance, the court will direct that the U.S. Marshals serve the defendants pursuant to Rule 4(c)(2) in this action. Additionally, the Marshals are to serve a copy of this order upon the defendants. Once the defendants have entered an appearance in this matter, counsel for the defendants is to show cause as to why the individual defendants should not pay the costs of service of the U.S. Marshals pursuant

to the provisions of Fed.R.Civ.P. 4(d)(2) which indicates in part that “. . . if a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown” and Subdivision 5.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States Magistrate Judge

Dated: May2, 2005

O:\shared\ORDERS\2004 ORDERS\04-0993.5.lp.wpd